IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION N0.1202 OF 1991

Smt. Laxmibai w/o Waman Adurkar
& Ors. ..Petitioners

Vs.

The Additional Commissioner,
Konkan Division, Bombay and Ors. ..Respondents

Mr.Pradeep Gole i/b H.D.Gole and M.N.Dhamal for the petitioners

Mr.S.K.Chinchalkar, A.G.P. for the respondent nos.1 and 2

CORAM : A.P.DESHPANDE, J

DATED : 29TH NOVEMBER, 2006

P.C.:

1. The petitioners in the instant petition are calling in question the legality and validity of an order passed u.s.45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 by the Additional Commissioner, Konkan Division, Bombay.

2. The SLDT had passed an order u.s.21 of the act declaring that the landlady holds land

admeasuring 6 acres 36 gunthas in excess of the ceiling area. The order passed by the SLDT is dt.17.1.76. For the first time, it is the case of the petitioners, that the petitioners were served with the notice dt.29.1.87 i.e. almost after a period of 10 years as the Additional Commissioner prima facie found fault in the order passed by SLDT by initiation of suo moto proceedings u.s.45(2) of the Act. After granting an opportunity of hearing to the petitioners, the Additional Commissioner passed the impugned order modifying the order passed by SLDT dt.17.1.76 declaring the surplus land to the extent of 108 acres instead of 6 acres 36 gunthas as declared by SLDT. A further direction is issued in regard to delimit after the grant of choice to the landlord under the provisions of s.16 of the Amended Ceiling Act.

3 The learned counsel for the petitioners has urged that the Additional Commissioner could not have exercised the revisional jurisdiction after a span of about 10 years by issuing a notice purportedly u.s.45(2) of the act. It is contended that ’calling for the record’ as provided u.s.45(2)

of act is not a mechanical or clerical act to be performed by the Additional Commissioner and the Additional Commissioner who acts as a delegate of State is under a statutory obligation to apply its mind to the facts and circumstances of the case. This application of mind has to be within a period of 3 years from the date of passing of the impugned order, having regard to the proviso to s.s.2 of s.45 of the Act. The learned counsel for the petitioners has placed reliance on the full bench judgement of this court in the case of Manohar Ramchandra Manapure vs. State of Maharashtra reported in 1989 MLJ 1011. The full bench in the said judgment has held that the proviso of s.45(2) of the Maharashta Agricultural Lands (Ceiling on Holdings) Act restricts the exercise of Jurisdiction u.s. 45(2) to those cases where the record is called for within a period of 3 years from the date of declaration u.s.21. The starting point of limitation as prescribed in the proviso of sub-section 2 of s.45, is the declaration made under section 21 of the Act. The full bench has further proceeded to conclude that what is contemplated for exercise of revisional

jurisdiction is some action or application of mind on the part of the State Government or its delegate before calling for the record. It is further held that the object behind prescribing limitation for calling for the record is to avoid a situation of uncertainty which crops up on passage of long time. 'Calling for the record' requires some positive act on the part of the authority to indicate application of mind.

4. Relying on the observation made by the full bench, the learned counsel for the petitioners submits that the impugned order was passed by the SLDT in the year 1977 whereas for the first time notice is served on the petitioner as late as in the year 1987. Hence, it is vehemently contended that the Additional Commissioner who acts as a delegate of the State Government did not have any power, authority or jurisdiction to exercise the one u.s.45(2) of the Act.

5. Per contra, the learned A.G.P. for the State Government has invited my attention to the impugned order wherein there is a mention about the

fact that the present case was scrutinised by the Commissioner's office on 29.5.78 and the same was done within a period of 3 years. Placing reliance on the said observation, it is submitted that the Commissioner could be said to have applied his mind within the prescribed period of limitation of 3 years. I reproduce the statement made in the impugned order which reads thus:

> "This case was scrutinised by the Commissioner's office on 29.5.78 i.e. within 3 years from the date of the order and the Collector Ratnagiri was directed to submit the case papers to the Additional Commissioner for taking it in review."

6. With a view to find out as to whether did the Commissioner apply his mind on 29.5.78 on which date it is claimed that the Commissioner's office had scrutinise the papers of the present case. On perusal of the original record, it is noticed that some notes were prepared on 29.5.78 by some one who has not signed the same and the said notes did not bear the signature of anyone from the office of the

Additional Commissioner. There is no other material on record to indicate that on 29.5.78, the Commissioner had applied his mind to the facts and circumstances of the case and then issued further directions, which would imply application of mind for calling of the record.

7. There is one more communication in the original record which is dt.21.3.85 and the same is from the Commissioner, Konkan Division. It is observed in the said communication that the Additional Collector, Ratnagiri's letter dt.5.2.79 is enclosed. The cases referred to therein have been received for taking action u.s.47 (2) of the Act. It is then observed that these cases were scrutinised by the officer on special duty at the time of office inspection and the officer on Special Duty had pointed out some descripancies in his note. A copy of the inspection note was therefore summoned for taking further action. The said communication from the Commissioner also does not remotely indicate that the Commissioner had applied his mind within 3 years.

8. Be it as it may, there is absolutely no material on record or in the original file which has been made available by the ld. A.G.P. for perusal of this court that the Additional Commissioner, acting as a delegate of the State Government, had applied his mind to the facts and circumstances of the present case for initiation of suo moto proceedings in revision u.s.45(2) before the expiry of period of limitation of 3 years from the date of passing of the order for SLDT. It may not be out of place to state that no affidavit in reply / return has been filed by the respondent State and / or the Commissioner. Even if the statement appearing in the impugned order in regard to scrutiny of the present case by the Commissioner's office on 29.5.78 is taken to be true, the same cannot be equated with making of a scrutiny by the Additional Commissioner who acts as a delegate of the State Government. In the absence of a categorical statement that the Additional Commissioner had applied his mind to the facts and circumstances of the present case within a period of 3 years from the date of passing of the order by the SLDT u.s.21 of the Ceiling Act, it has to be

held that issuance of notice to the petitioners in the year 1987 and the subsequent proceedings culminating in passing of the impugned order are without Jurisdiction.

9. Hence, writ petition deserves to be allowed. I proceed to allow the same. The impugned order passed by the Additional Commissioner , Konkan Division Mumbai dt.5.12.90 in Appeal Desk-CLN-1515 is quashed and set aside. Rule is made absolute in above terms with no order as to costs.

(SHRI A.P.DESHPANDE, J)